SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 121, Miscellaneous

SAMUEL TAYLOR, PETITIONER,

vs.

TENNYSON DENNIS, WARDEN, ALABAMA STATE PENITENTIARY, KILBY, ALABAMA

ON WRIT OF CERTIORARI

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 21, 1948.

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[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Civil Action No. 533-N

SAMUEL TAYLOR, Petitioner,

vs.

TENNYSON DENNIS, Warden, Alabama State Penitentiary, Kilby, Alabama, Respondent

PETITION FOR WRIT OF HABEAS CORPUS—Filed July 6, 1948

[fol. 2] Your Petitioner, Samuel Taylor, respectfully represents and shows unto this court that he is a citizen of the United States of America and of the State of Alabama; that he is at the present time unjustly and unlawfully detained and imprisoned at the State Penitentiary, Kilby, Alabama by Respondent, Tennyson Dennis as Warden of said prison by virtue of a judgment and sentence of death by electrocution pronounced upon him by the Circuit Court of Mobile County, Alabama on November 19, 1946 on a charge of rape, from which judgment Petitioner prosecuted an appeal to the Supreme Court of Alabama where the said judgment was affirmed on the 24th day of April, 1947, the style of the cause being Samuel Taylor versus the State of Alabama, First Division #279 and reported in Vol. 30, Southern Reporter, Second Series, at page 256.

On September 18, 1947, Petitioner filed in the Supreme Court of the State of Alabama a petition for Writ of Error Coram Nobis on the grounds that his said conviction and sentence was based on a confession which was introduced in evidence on the trial of said cause against Petitioner, which said confession was coerced and was not freely and voluntarily made by your Petitioner. The Supreme Court of Alabama on November 13, 1947 denied the petition of your Petitioner and on December 4, 1947 overruled Petitioner's application for rehearing, the opinion of said court being reported in Volume 32, Southern Reporter, Second Series, at

page 659. On March 3, 1948, Petitioner applied to the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the Supreme Court of Alabama in denying him leave to file a petition for Writ of Error Coram Nobis in the Circuit Court of Mobile County, Alabama. Certiorari was granted by the United States Supreme Court [fol. 3] on April 5, 1948 and the judgment of the Alabama Supreme Court affirmed on June 21, 1948. (Taylor v. Alabama, Oct. 1947 Term, No. 721).

Your Petitioner further shows that said judgment, verdict and sentence of death were based on an alleged confession which was introduced as evidence on the trial of said cause by the State of Alabama. That said confession was obtained by the use of force, fear, intimidation, and threat inflicted on and against your Petitioner; that said confession was not freely and voluntarily made by your Petitioner, and that as a consequence thereof, his said conviction and sentence as aforesaid is void by virtue of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

That these specific facts relating to the involuntary and coerced nature of said confession are as follows: That Petitioner was arrested by police officers of the City of Prichard, Alabama at 11:30 P.M. on June 29, 1946. That there were arrested at the same time as your Petitioner, three other Negro men, to-wit: Lawrence H. Franklin, Johnnie Kimbrough and Calvin Jones. That your Petitioner and these three men were taken into the City Jail at Prichard, Alabama. That before they were docketed or placed in a cell, the police officers on duty at that time whose names are unknown to your Petitioner, beat, kicked and bruised Petitioner and said three men in an effort to obtain a confession of a robbery.

That after Petitioner and the three other prisoners were docketed they were taken by said police officers one at a time in a small room in said jail. That all four of said men were brutally beaten, kicked and bruised in an effort to obtain said confession. That your Petitioner did, in fact, confess to said robbery but that after he had made this confession, he was retained in said room in the Prichard, Alabama jail by said police officers and told that he must make a confession of the rape for which he was later con-

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victed and sentenced by the Circuit Court of Mobile County as aforesaid. That he was further beaten, kicked and bruised by said police officers but refused to make a confession of said rape. That he was thereafter returned to his cell in the said City Jail at Prichard, Alabama by said police officers at an early hour in the morning of Sunday, June 30, 1946. That he was no further molested throughout the day of said Sunday but that during the late hours of Sunday night, June 30, 1946, and early morning July 1, 1946, he was further beaten, bruised and threatened as aforesaid. That said mistreatment and questioning by the [fol. 4] police officers of the City of Prichard continued for a period of several hours and upon Petitioner's failure to confess to said crime he was again returned to his cell where he was left unmolested throughout the day of Monday, July 1, 1946. That on the night of Monday, July 1, 1946 and the early morning of Tuesday, July 2, 1946, Petitioner was again subjected to similar mistreatment and questioning as on the previous night. Again your Petitioner maintained his innocence of said crime and after several hours was returned to his cell where he was left unmolested until the night of Tuesday, July 2 and early morning of Wednesday, July 3, 1946. On that night he was again visited by the police officers of the City of Prichard as aforesaid and was subjected to more brutal and cruel beatings and mistreatment. He was told unless he did confess to the crime of rape as aforesaid he would be continually subjected to such brutal mistreatment and intimidation until he did, in fact, confess to said crime. That your Petitioner was so fearful for his life, health and safety that he made a confession of said crime in the early morning hours of Wednesday, July 3, 1946. He was told by said police officers of the City of Prichard that if he made any mention of the fact that he was beaten and mistreated as aforesaid that he would be subjected to even more cruel beatings and mistreatment. That at approximately three o'clock in the morning of July 3, 1946, Petitioner was brought in to a carefully selected and arranged group for a formal confession of said crime of rape. That none of the persons who witnessed said formal confession which was later introduced in evidence on the trial of said cause as aforesaid had any knowledge of the fact that Petitioner had been beaten,

threatened, abused and mistreated by the said police officers of the City of Prichard as aforesaid, in order to obtain said confession, with the exception of Prichard Police Sergeant "Buster" Wilkes who had participated in the beatings of Petitioner since his arrest on Saturday, June 29, 1946.

That your Petitioner is a Negro who at that time was nineteen years of age and had very little schooling and was ignorant of his rights and priviledges as a citizen of the United States and more particularly was unaware of the protection guaranteed to him by the due process laws of the Constitution of the United States and the Fourteenth Amendment thereof, and as a consequence thereof, Peti- [fol. 5] tioner failed to mention the cruel and inhumane treatment to which he was subjected by the said police of the City of Prichard, Alabama to his attorney who represented him on the trial of said cause in the Circuit Court of Mobile County, Alabama, being ignorant of his rights as aforesaid and of court procedure. That your Petitioner's present counsel was not advised of the above facts until after the Petitioner's conviction and the preparation and filing of the motion for a new trial and the overruling of said motion by the said Circuit Court of Mobile County, Alabama and the appealing of the Petitioner's cause and the docketing of same and the decision of the Supreme Court of Alabama as aforesaid.

Your Petitioner further avers that his imprisonment, conviction and sentence of death and his present imprisonment is the result of a deprivation of due process of law and of his rights guaranteed to your Petitioner by the Constitution of the United States of America, in that the law enforcement officers of the State of Alabama obtained his conviction by the introduction in evidence at the trial of said cause of a confession which was forceably extorted from your Petitioner as aforesaid, thereby denying to him due process of law and the rights guaranteed to him by and under the Fourteenth Amendment of the Constitution of the United States of America.

Wherefore, to be relieved of said unlawful detention, imprisonment and sentence of death, your Petitioner prays that a Writ of Habeas Corpus, directed to the said Tennyson Dennis, Warden of the Alabama State Penitentiary, Kilby, Alabama, may issue in his behalf so that your Petitioner

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may be forthwith brought before this Court, to do, submit to and receive what the law may direct.

Samuel Taylor.

Nesbitt Elmore, Attorney for Petitioner.

Duly sworn to by Samuel Taylor. Jurat omitted in printing.

[File endorsement omitted.]

Respondent accepts service of this petition.
7-7-48 Bernard F. Sykes.

[fol. 6] In the District Court of the United States

[Title omitted]

Rule to Show Cause—Filed July 7, 1948

Petitioner, Samuel Taylor, filed in this court, on July 6, 1948, his petition for a writ of habeas corpus for his release from imprisonment from Kilby Prison and the custody of Tennyson Dennis, as Warden of said Kilby Prison.

It is now ordered that a rule of this court issue, and the same is now issued, to Honorable Albert Carmichael, Attorney General of the State of Alabama, commanding him as such Attorney General of the State of Alabama, to appear at 2:30 p.m., Wednesday, July 7, 1948, in the United States Court Room, at Montgomery, Alabama, if he deems proper to do so, and show cause, if any there be, why said writ of habeas corpus should not issue.

This rule shall be served on Albert Carmichael, as Attorney General of the State of Alabama, and he, or one of his duly authorized assistants may accept service of the same.

Done at Montgomery, Alabama, this 7th day of July, 1948.

C. B. Kennamer, United States District Judge.

I hereby accept service of the foregoing rule on this the 7th day of July, 1948, at Montgomery, Alabama.

Bernard F. Sykes, Assistant Attorney General of the State of Alabama.

[File endorsement omitted.]

[fol. 7] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT AND MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—Filed July 7, 1948

To The Honorable, Charles Kennamer, Judge of the United States District Court for the Middle District of Alabama:

Petitioner, Samuel Taylor, respectfully moves this Court for leave to proceed in forma pauperis for and by such relief as in the opinion of the Court his case may properly entitle him, and in support of such motion shows:

1. That he is a citizen of the United States of America and a resident of Mobile County, Alabama, and is a Negro. That he is under sentence of death, having been convicted in the Circuit Court of Mobile County, Alabama, on the 19th day of November, 1946, and on appeal his conviction was affirmed by the Supreme Court of Alabama on the 24th day of April, 1947. That subsequently on the 13th day of November, 1947, the Supreme Court of the State of Alabama denied petitioner leave to file an Application for Writ of Error Coram Nobis before the Circuit Court of Mobile County, Alabama, and on the 4th day of December, 1947, denied petitioner's application for rehearing of his petition for leave to file his said application for Writ of Error Coram Nobis. On March 3, 1948, Petitioner applied to the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the Supreme Court of Alabama in denying him leave to file a petition for Writ of Error Coram Nobis in the Circuit Court of Mobile County, Alabama. Certiorari was granted by the United States [fol. 8] Supreme Court on April 5, 1948 and the judgment of the Alabama Supreme Court affirmed on June 21, 1948. (Taylor v. Alabama, Oct. 1947 Term, No. 721).

2. Petitioner avers that on his trial in the Circuit Court of Mobile County, Alabama he was denied due process of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

Petitioner now shows that there is no other Court to which he can appeal for relief save to the District Court of the United States for the Middle District of Alabama and

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that he cannot proceed in that Court unless he is allowed to do so under Pauper's Oath.

3. Petitioner further avers that he has no property, real, personal or mixed; that he is now, and has been since his arrest, destitute; that his parents have no funds or property out of which the costs of this proceeding could be paid; and that neither he nor his parents have been able to, nor can they, obtain the money to pay for the costs and expenses of this review, being wholly dependent upon gratuitous charity for any assistance on this proceeding for review of his conviction.

4. Petitioner avers further that in his trial below, the State of Alabama denied him due process of law by admitting in the evidence a confession obtained from petitioner by officers of Mobile County, Alabama, through the use of cruel, brutal and inhuman treatment.

5. Petitioner has been informed by Counsel that it is his belief that he has been tried, convicted and sentenced without due process of law, and this petitioner verily believes. Petitioner likewise says that he is entitled to the relief he seeks in this proceeding, being so informed by Counsel, and he avers that he does not proceed herein for purpose of delay.

Wherefore, the premises considered, Petitioner now requests this Honorable Court to enter a proper order that he may proceed in the prosecution of this cause *in forma pauperis*, by such procedure as by law he may be entitled; and for such other and different relief to which he may be entitled.

Samuel Taylor, Petitioner.

[fol. 9] *Duly sworn to by Samuel Taylor, jurat omitted in printing.*

In the District Court of the United States

Order Granting Leave to Proceed in Forma Pauperis—Filed July 7, 1948

The foregoing affidavit and motion for leave to proceed in forma pauperis having been considered and understood by the court,

It is ordered that the same be, and is, granted, and the Petitioner may proceed in this court in the prosecution of his petition for a writ of habeas corpus in forma pauperis.
This 7th day of July, 1948.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 10] In the District Court of the United States

[Title omitted]

Return to Rule—Filed July 7, 1948

Comes the State of Alabama, by and through its Attorney General, in behalf of the respondent, Warden of Kilby Prison, and appears specially and for no other purpose, and, without admitting even for the purpose of argument the allegations of the petition, says that the United States District Court should not issue a writ of habeas corpus in the above styled cause for the following separate and several reasons:

1. For that the issues sought to be raised by said petition have been raised in the Supreme Court of Alabama and in the Supreme Court of the United States, and have been decided adversely to the petitioner.

2. For that said petition presents no exceptional nor unusual circumstances of peculiar urgency calling for the exercise of federal jurisdiction over a state prisoner.

3. For that the issue sought to be raised by said petition, to-wit, whether or not a confession or confessions, which were introduced in evidence on petitioner's trial, were voluntary or involuntary, has been raised in the Supreme Court of the State of Alabama on coram nobis proceedings [fol. 11] and there decided adversely to the petitioner, and that after said adverse decision said issue was also determined adversely to the petitioner in the Supreme Court of the United States.

4. For that this court in this proceeding should not re-examine the questions and issues already adjudicated.

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5. For that in the exercise of its discretion orderly procedure requires that the District Court should not issue the writ of habeas corpus.

6. For that it has been decided both by the Supreme Court of Alabama and the Supreme Court of the United States that petitioner has been accorded due process of law, and has not been deprived of his life or liberty without due process of law.

7. For that said petitioner has not applied to the United States Supreme Court for a writ of habeas corpus, nor has he applied to said court for leave to apply to the District Court of the United States for a writ of habeas corpus.

[fol. 12] Wherefore, respondent prays that this court should not issue a writ of habeas corpus, and further that said respondent should not be required to answer further or make return to said petition, and that the petition should be dismissed and petitioner remanded to the custody of respondent.

A. A. Carmichael, Attorney General; Bernard F. Sykes, Assistant Attorney General; James L. Screws, Assistant Attorney General, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 13] In the District Court of the United States for the Middle District of Alabama, Northern Division

Civil Action No. 533-N

Samuel Taylor, Petitioner

vs.

Tennyson Dennis, Warden, Alabama State Penitentiary, Kilby, Alabama, Respondent

Order Dismissing Petition for Writ of Habeas Corpus—Filed July 8, 1948

This cause coming on to be heard on this the 7th day of July, 1948, and the petitioner, Samuel Taylor, being present in open court and being represented by counsel, the

court proceeds to hear argument of counsel on the petition for writ of habeas corpus, the rule heretofore issued by this court to the respondent to show cause why the writ of habeas corpus should not issue and the motion filed by the respondent; and,

The court is of the opinion that the motion is well taken,

It is therefore considered, ordered, adjudged, and decreed that the motion of respondent be granted and that said petition for writ of habeas corpus be dismissed, and the petitioner is remanded to custody of the Warden of Kilby Prison.

The court is of the opinion that the identical issues sought to be raised by the allegations of the petition have been raised in the Supreme Court of Alabama in coram nobis proceedings by this petitioner; the court further finds that those issues were inquired into by the Supreme Court of Alabama and for reasons and upon proof satisfactory to the State Supreme Court relief was denied to the petitioner; further that the said judgment of the Supreme Court of Alabama was affirmed by the Supreme Court of the United [fol. 14] States, and said United States Supreme Court having found that the remedy afforded petitioner in the State Supreme Court was in compliance with the Fourteenth Amendment to the United States Constitution,

In the exercise of its discretion to grant or refuse the writ of habeas corpus, this court has given weight to the judgments, opinions, and the matters referred to in the opinions of the Supreme Court of Alabama and of the United States Supreme Court in this case, and this court is of the opinion that in view of said opinions and judgments, and the history of said case that a further hearing is not required by the Constitution of the United States.

Dated this the 7th day of July, 1948.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

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[fol. 15] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

ORDER DENYING PETITION FOR CERTIFICATE OF PROBABLE CAUSE

It is ordered that the Petition for a certificate of probable cause for an appeal to this court, from the judgment of the United States District Court for the Middle District of Alabama, denying Petitioner a Writ of Habeas Corpus in the above styled cause be, and the same is hereby denied, Samuel Taylor, Petitioner, v. State of Alabama, United States Supreme Court, decided June 21, 1948; Taylor v. State, 249 Ala. 130; Ex Parte Taylor, 249 Ala. 667; 28 USCA, Sections 452 and 466.

Leon McCord, U. S. Circuit Judge, Fifth Circuit Court of Appeals.

Filed July 12, 1948. O. D. Street, Jr., Clerk.

[fol. 16] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION FOR CERTIFICATE OF PROBABLE CAUSE—Filed July 17, 1948

To the Honorable Charles B. Kennamer, Judge of Said Court:

Comes now the Petitioner in the above styled cause and moves the Court for a certificate of probable cause for an appeal to the United States Circuit Court of Appeals for the Fifth Judicial Circuit from the judgment of this Court dismissing Petitioner's application for Writ of Habeas Corpus, which said judgment was rendered by this Court on July 7, 1948.

Nesbitt Elmore, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 17] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER DENYING MOTION FOR CERTIFICATE OF PROBABLE CAUSE —Filed July 17, 1948

On the 7th day of July, 1948, when the petition of the petitioner Samuel Taylor, for the issuance of a writ of Habeas Corpus, was heard by this court on a rule issued to the Attorney General of Alabama to show cause why such writ of habeas corpus should not issue, and the Attorney General of Alabama having appeared and filed a motion to dismiss the said petition for the issuance of said writ of habeas corpus, and the court, after a full hearing of counsel for the petitioner and for the Attorney General, was of the opinion, and so found, that the motion to dismiss the petition for said writ of habeas corpus was well founded, and this court entered an order and judgment dismissing said petition, and stated orally that this court would decline to make a certificate of probable cause for an appeal to the circuit court of appeals for the fifth circuit, the Attorney for the petitioner made application to Honorable Leon McCord, one of the judges of the fifth circuit court of appeals for a certificate of probable cause for such appeal, and said application was denied by Judge McCord. Thereafter a formal written petition was presented to this court for a certificate of probable cause. This petition having been understood and considered by the court, it is ordered that the same be, and is, denied.

This 17th day of July, 1948.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 18] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 19] [File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 12441

SAMUEL TAYLOR, Petitioner,

vs.

TENNYSON DENNIS, Warden, Alabama State Penitentiary, Kilby, Alabama, Respondent

PETITION FOR CERTIFICATE OF PROBABLE CAUSE—Filed July 16, 1948

To the Honorable Judges of said Court:

Your Petitioner, Samuel Taylor, respectfully shows unto the Court as follows:

1. That on July 6, 1948 he filed with the United States District Court for the Middle District of Alabama a petition for Writ of Habeas Corpus by Virtue of a process issued out of an Alabama State Court, to-wit: the Circuit Court of Mobile County, Alabama and the Supreme Court of Alabama, which said petition averred in substance that Petitioner is at the present time imprisoned and under sentence of death by virtue of a conviction and judgment by the Circuit Court of Mobile County, Alabama for the crime of rape; that there was introduced in evidence against Petitioner on the trial of said cause in the Circuit Court of Mobile County, Alabama a confession which was extorted from him by the use of threats and violence, which said confession was not freely and voluntarily made by your Petitioner; that your Petitioner had exhausted his state remedites and prayed the United States District Court for a hearing on the issued raised in his said petition.

2. The said United States District Court for the Middle District of Alabama upon filing of said petition issued to the State of Alabama a rule to show cause why the Writ of Habeas Corpus should not be granted. The State of Alabama filed a motion to dismiss the petition on substantially the grounds that the issues raised had been adjudicated by

the Supreme Court of Alabama and the Supreme Court [fol. 20] of the United States. The said United States District Court for the Middle District of Alabama dismissed on said motion of the State of Alabama the petition for the Writ of Habeas Corpus without a hearing, and further denied to Petitioner certificate of probable cause to this Honorable Court existed.

Wherefore, Petitioner prays that there be issued by this Court a certificate that there exists probable cause for an appeal to this Court from the judgment of the United States District Court for the Middle District of Alabama.

(Signed) Nesbitt Elmore, Attorney for Petitioner.

[fol. 21] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR CERTIFICATE OF PROBABLE CAUSE

It is ordered that the Petition for a certificate of probable cause for an appeal to this court, from the judgment of the United States District Court for the Middle District of Alabama, denying Petitioner a Writ of Habeas Corpus in the above styled cause be, and the same is hereby denied. Samuel Taylor, Petitioner, v. State of Alabama, United States Supreme Court, decided June 21, 1948; Taylor v. State, 249 Ala. 130; Ex Parte Taylor, 249 Ala. 667; 28 USCA, Sections 452 and 466.

(Signed) Leon McCord, United States Circuit Judge, Fifth Circuit.

[fol. 22] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 23] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 121, Misc.

On Motion for Leave to file petition for writ of certiorari.

ORDER GRANTING MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI, AND GRANTING PETITION FOR CERTIORARI—December 13, 1948

On Consideration of the motion for leave to proceed herein *in forma pauperis* and of the motion for leave to file petition for writ of certiorari, it is ordered by this Court that the said motions be, and they are hereby, granted.

The Petition for Certiorari is also granted and the case is transferred to the summary docket.

It Is Further Ordered that the duly certified copy of the transcript of the proceedings below which accompanied the motion and petition shall be treated as though filed in response to such writ.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

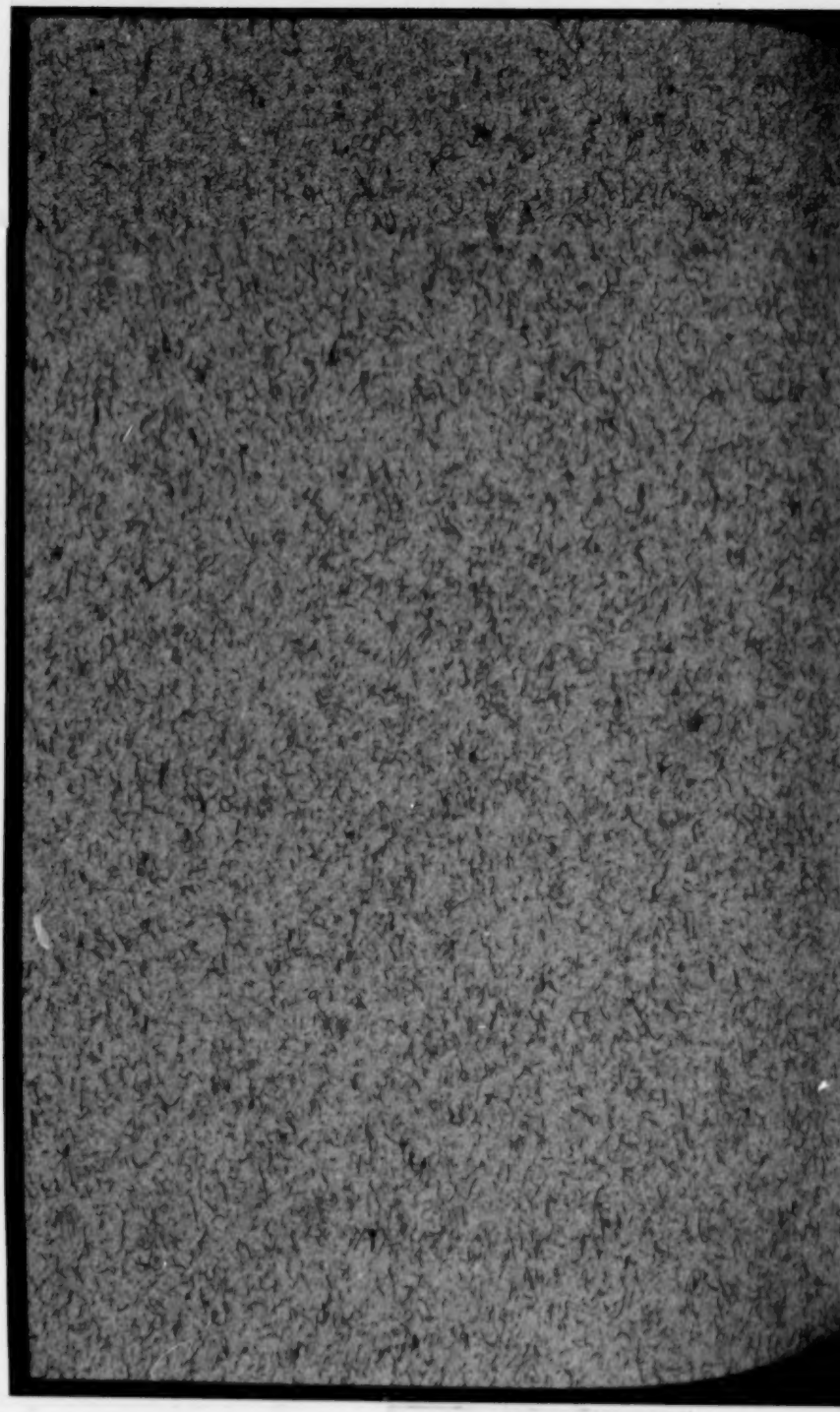
TENNYSON DENNIE, Warden Alabama State Penitentiary, Kilby, Alabama,

Respondent

BRIEF FOR PETITIONER

[illegible],
Tennessee Bar,
Memphis, Tennessee,
Attorneys for Petitioner.

Frank D. Reeves,
Franklin H. Williams,
Of Counsel.



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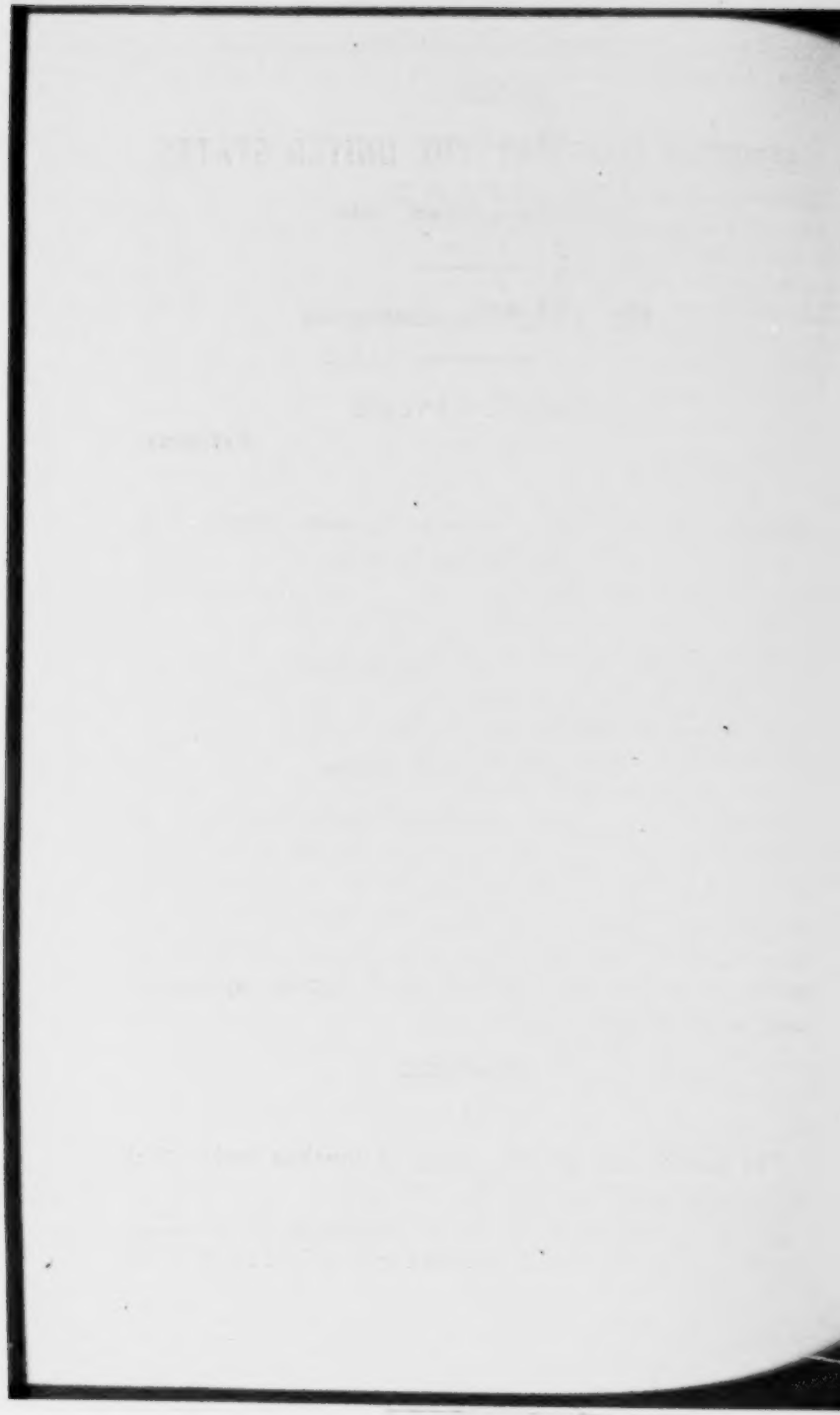

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

TENNYSON DENNIS, WARDEN ALABAMA STATE PENITENTIARY, KILBY, ALABAMA,

Respondent

BRIEF FOR PETITIONER

Opinion of Court Below

Neither the opinion of the United States District Court for the Middle District of Alabama nor the order of the United States Circuit Court of Appeals for the Fifth Circuit has been reported officially. The District Court opinion appears at pages 9 and 10 of the Record and the Order of the United States Circuit Court of Appeals appears on page 14 of the Record.

Jurisdiction

I

The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1651 (a).

The date of judgment in the United States District Court for the Middle District of Alabama is July 7, 1948 (R. 9-10).

The date of the order denying a certificate of probable cause for an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, issued by the said United States District Court, is July 17, 1948 (R. 12). The date of the order of the United States Circuit Court of Appeals for the Fifth Circuit denying a petition for a certificate of probable cause for an appeal to that court, is July 12, 1948 (R. 14). Motion for leave to file petition for writ of certiorari and petition for certiorari were duly presented to this Court on September 14, 1948 and were granted by this Court on December 13, 1948 (R. 15).

Summary Statement of Matter Involved

1. Statement of the Case

Petitioner, an ignorant Negro, nineteen years of age at the time of his trial, was convicted of the crime of rape and sentenced to death by electrocution by the Circuit Court of Mobile County, Alabama on November 19, 1946. Upon appeal, the Supreme Court of Alabama on April 24, 1947 affirmed this judgment. *Taylor* v. *State,* 249 Ala. 130, 30 So. 2d 256.

On September 18, 1947, petitioner through new counsel petitioned the Supreme Court of Alabama for permission to file a petition for writ of error *coram nobis* in the trial court. This sworn petition with supporting affidavits alleged that the conviction was based upon confessions obtained through the use of force, duress and intimidation by police officers of the state. On November 13, 1947 the petition was denied. *Ex Parte Taylor,* 249 Ala. 667, 32 So. 2d 659.

Certiorari to the Supreme Court of Alabama was granted by this Court on April 5, 1948. *Taylor* v. *Alabama,* 333 U. S. 866.

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On June 21, 1948, this Court affirmed the judgment of the Supreme Court of Alabama. *Taylor* v. *Alabama*, 335 U. S. 252.

On July 6, 1948, petitioner filed a petition for writ of habeas corpus in the District Court of the United States for the Middle District of Alabama (R. 1-5); a rule to show cause was thereupon issued to respondent (R. 5).

On July 7, 1948 respondent filed a motion to dismiss. (R. 8-9) On the same day the court dismissed the petition without requiring a return, granting a hearing or taking testimony, (R. 9-10) and immediately thereafter denied an oral motion for a certificate of probable cause (R. 12).

Subsequently, a written petition for a certificate of probable cause, addressed to the United States Circuit Court of Appeals for the 5th Circuit, filed on July 16, 1948 (R. 13) was denied by Leon McCord, one of the judges thereof (R. 14).

On July 17, 1948, petitioner filed a written motion for a certificate of probable cause in the District Court (R. 11) which was denied on that same date (R. 12).

Petition for certiorari was granted by this Court on December 13, 1948. *Taylor* v. *Dennis*, Oct. Term, 1948, No. 121 Misc., — U. S. —.

2. Statement of Facts

The facts of the case are set out in the petition for writ of habeas corpus (R. 1-5). It is therein alleged that petitioner is at the present time detained and imprisoned by Tennyson Dennis, Warden of the Alabama State Penitentiary, Kilby, Alabama, under sentence of death by electrocution by virtue of a judgment of the Circuit Court of Mobile County, Alabama, rendered on November 19, 1946, on a conviction of rape; that the said judgment and conviction was affirmed by the Supreme Court of Alabama on April 24,

1947, and reported at 30 So. (2d) 256; that petitioner was arrested by police officers of the City of Prichard, Alabama, on June 29, 1946; that he was beaten, threatened and coerced by said officers for a period of three days until he made a confession to a rape charge; that said confession was later introduced in evidence on the trial of his case in the Circuit Court of Mobile County, Alabama, but that due to ignorance of his rights and the fear of reprisals in which he was placed by the threats of these police officers, he failed to mention the coerced nature of said confession to his attorney, who was first appointed to represent him at said trial, and that consequently no evidence as to the involuntary nature of said confession was introduced on his behalf in said trial.

The petitioner further alleged that after his conviction and the affirmance of the judgment of conviction as aforesaid, petitioner's family employed new counsel to represent him, which counsel discovered evidence as to the involuntary nature of said confession and on the basis thereof filed in the Supreme Court of Alabama a petition for leave to file a petition for a writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama, to inquire into the involuntary nature of said confession; that on the 13th day of November, 1947, the Supreme Court of Alabama (one justice dissenting) denied said petition, and further denied without opinion an application for rehearing on December 4, 1947 (*Ex Parte Taylor*, 249 Ala. 667, 32 So. 2d 659). The petition alleged that subsequently, petitioner filed a timely application to this Court for certiorari claiming that due process of law had been denied him by virtue of the decision of the Supreme Court of Alabama in refusing permission to petitioner to file for a writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama; that certiorari was granted on April 5, 1948 (*Taylor* v. *Alabama*, 333 U. S. 866); that on June 21, 1948, this Court affirmed

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the judgment of the Supreme Court of Alabama, holding that petitioner's rights to due process of law had not been violated by the action of the Supreme Court of the State of Alabama (*Taylor* v. *Alabama*, 335 U. S. 252).

In spite of the uncontroverted allegations of the petition for habeas corpus, the District Court dismissed said petition without requiring a return or a hearing. Petitioner has exhausted all of the judicial remedies available to him, both in the Alabama courts and in the lower United States courts, and has not yet obtained a hearing on the allegations set forth in his petition for writ of habeas corpus.

Question Presented

IS A FEDERAL DISTRICT COURT JUSTIFIED, AFTER ISSUING A RULE TO SHOW CAUSE, IN DISMISSING AN UNCONTROVERTED PETITION FOR HABEAS CORPUS IN THE ABSENCE OF AN ANSWER OR A HEARING, WHICH PETITION SUFFICIENTLY ALLEGES DEPRIVATION BY A STATE CRIMINAL COURT OF PETITIONER'S CONSTITUTIONAL RIGHTS, ON THE GROUNDS THAT THE FACTS AS ALLEGED THEREIN WERE PREVIOUSLY HELD BY THE STATE'S HIGHEST COURT TO BE INSUFFICIENT TO INVOKE CORAM NOBIS, THE ONLY AVAILABLE STATE REMEDY, AND THAT THIS COURT FOUND THAT SUCH REFUSAL TO GRANT CORAM NOBIS WAS NOT A DENIAL OF DUE PROCESS?

Errors Relied Upon

I

The Federal District Court erred in dismissing the uncontroverted petition for habeas corpus.

II

The Federal District Court erred in holding that a hearing on the habeas corpus petition was not required by the United States Constitution because:

A. The same issues were inquired into by the Supreme Court of Alabama on *coram nobis* proceedings and were there found legally insufficient to warrant relief; and

B. This Court, on certiorari, found that the proceedings in the Alabama Supreme Court on petitioner's *coram nobis* application were in compliance with due process.

III

The Federal District Court and the Circuit Court of Appeals erred in refusing to issue a certificate of probable cause.

Outline of Argument

I

Use by a state of a coerced confession to obtain a conviction for a crime is a violation of the due process clause of the Fourteenth Amendment.

Lee v. *Mississippi*, 332 U. S. 722;
Haley v. *Ohio*, 332 U. S. 596;
Malinski v. *New York*, 324 U. S. 401;
Ashcraft v. *Tennessee*, 322 U. S. 143;
Ward v. *Texas*, 316 U. S. 547;
Lisenba v. *California*, 314 U. S. 219;
Vernon v. *Alabama*, 313 U. S. 547;
White v. *Texas*, 310 U. S. 530;
Chambers v. *Florida*, 309 U. S. 227;
Brown v. *Mississippi*, 313 U. S. 547.

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II

A habeas corpus proceeding in the Federal District Court is the proper method of attacking a conviction obtained in a state court in violation of defendant's constitutional rights, after the exhaustion of state remedies.

White v. *Ragen*, 324 U. S. 760;
Wade v. *Mayo*, 332 U. S. 672.
House v. *Mayo*, 324 U. S. 42;
Ex parte Hawk, 321 U. S. 114;
Mooney v. *Holohan*, 294 U. S. 103;
Title 28, United States Code, Sections 2241-2255.

III

The allegations of a petition for habeas corpus in Federal courts must be taken as true in the absence of an answer or a hearing.

White v. *Ragen*, 324 U. S. 760;
House v. *Mayo*, 324 U. S. 42;
Williams v. *Kaiser*, 323 U. S. 471;
U. S. v. *Adams*, 320 U. S. 220.

IV

The Federal District Court is under the duty to forthwith award the writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto.

Holiday v. *Johnston*, 313 U. S. 342;
Price v. *Johnston*, 334 U. S. 266;
Von Moltke v. *Gillies*, 332 U. S. 708;
Marino v. *Ragen*, 332 U. S. 561;
U. S. v. *Adams*, 320 U. S. 220;
Ex parte Quirin, 317 U. S. 1;
Walker v. *Johnston*, 312 U. S. 275;
Title 28, United States Code, section 2243 (then, 28 U. S. C. #461).

V

The prior proceedings in this case did not relieve the District Court of its duty to afford petitioner a hearing on the allegations of the petition for habeas corpus.

House v. Mayo, 324 U. S. 42;
Waley v. *Johnston*, 316 U. S. 101.

VI

This Court has jurisdiction to review by certiorari the action of the lower Federal courts in declining leave to appeal in this case and such review extends to questions on the merits sought to be raised by the appeal.

Title 28, United States Code, section 1651 (a);
House v. *Mayo*, 324 U. S. 42;
Re 620 Church St. Building Corp., 299 U. S. 24;
Steffler v. *U. S.*, 319 U. S. 38;
Wells v. *U. S.*, 318 U. S. 257;
Holiday v. *Johnston*, 313 U. S. 342.

Argument

I

USE BY A STATE OF A COERCED CONFESSION TO OBTAIN A CONVICTION FOR A CRIME IS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

A conviction based in whole or in part upon a confession obtained through fear, intimidation or duress deprives a defendant of due process of law guaranteed by the United States Constitution.[1] This principle has been reiterated by

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[1] *Lee* v. *Mississippi*, 332 U. S. 772; *Haley* v. *Ohio*, 332 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Chambers* v. *Florida*, 309 U. S. 227.

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this Court in a long line of cases,[2] and is applicable both to convictions in state [3] and Federal courts,[4] whether the coercion was physical or mental.[5]

The petition for writ of *habeas corpus* herein set out in detail the facts and circumstances surrounding the obtaining of an involuntary confession from petitioner which was subsequently used as the basis of his conviction (R. 1-5). These facts, if true, set out a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.[6]

II

A HABEAS CORPUS PROCEEDING IN THE FEDERAL DISTRICT COURT IS THE PROPER METHOD OF ATTACKING A CONVICTION OBTAINED IN A STATE COURT IN VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHTS, AFTER THE EXHAUSTION OF STATE REMEDIES

Since *Frank* v. *Mangum*, 237 U. S. 309, this Court has recognized that *habeas corpus* in the federal courts is necessary "to safeguard the liberty of all persons within the jurisdiction of the United States against infringement through any violation of the Constitution," even though the events alleged to infringe do not appear upon the face of the record of conviction.[7]

Power to issue writs of *habeas corpus* have been con-

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[2] *Lee* v. *Mississippi, supra; Haley* v. *Ohio, supra; Malinski* v. *New York, supra; Ashcraft* v. *Tennessee*, 322 U. S. 143; *Ward* v. *Texas*, 316 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Vernon* v. *Alabama*, 313 U. S. 547; *White* v. *Texas*, 310 U. S. 530; *Brown* v. *Mississippi*, 313 U. S. 547.

[3] See footnote 2, *supra*.

[4] *Anderson* v. *United States*, 318 U. S. 350; *McNabb* v. *United States*, 318 U. S. 332.

[5] *Anderson* v. *United States*, 318 U. S. 350; *McNabb* v. *United States, supra; Ward* v. *Texas, supra*.

[6] *Chambers* v. *Florida, supra*.

[7] *Mooney* v. *Holohan*, 294 U. S. 103.

ferred upon the federal courts by statute,[8] and includes the authority to issue the writ where petitioner is detained by state authority in violation of his constitutional rights. This Court has limited this authority by holding that resort to federal courts for the writ, except in extraordinary circumstances,[9] may be had only if all state remedies have been exhausted.[10] Where such state remedies have been pursued to no avail, however, the defendant may petition the federal court for *habeas corpus* relief, where he makes a substantial showing of violation of his constitutional rights by a state court.[11]

In the instant case, petitioner previously applied to the Supreme Court of Alabama for leave to file a petition for writ of *coram nobis* in the state trial court, setting up in his application specific details surrounding the making of an alleged confession which was used by the state to obtain his conviction in the trial court. The Alabama Supreme Court denied the permission sought and upon certiorari this Court found that the action of the Alabama Supreme Court was not in violation of the due process clause of the Fourteenth Amendment. Petitioner, thus had exhausted to no avail the only state remedy provided by Alabama procedure and accordingly presented his petition for *habeas corpus* in the District Court of the United States for the Middle District of Alabama.

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[8] Title 28 United States Code, sections 2241-2255.

[9] *Moore* v. *Dempsey*, 261 U. S. 86.

[10] *White* v. *Ragen*, 324 U. S. 760; *House* v. *Mayo*, 324 U. S. 42; *Ex parte Hawk*, 321 U. S. 114; *Mooney* v. *Holohan*, *supra*.

[11] *Wade* v. *Mayo*, 332 U. S. 672.

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III

THE ALLEGATIONS OF A PETITION FOR HABEAS CORPUS IN FEDERAL COURTS MUST BE TAKEN AS TRUE IN THE ABSENCE OF AN ANSWER OR A HEARING

In the instant case, the Federal District Court dismissed the petition for *habeas corpus* without requiring an answer and without a hearing. Upon the issuance of its rule to show cause, the Attorney General of the State of Alabama, acting for the respondent filed a pleading characterized by the district court as a "motion to dismiss" the petition (R. 12). In view of this, therefore, as stated by this Court in the case of *House* v. *Mayo:* "Since the petition for *habeas corpus* was denied without requiring respondent to answer and without a hearing, we must assume that the petitioner's allegations are true." [12]

IV

THE FEDERAL DISTRICT COURT IS UNDER THE DUTY TO FORTHWITH AWARD THE WRIT OF HABEAS CORPUS, UNLESS IT APPEARS FROM THE PETITION ITSELF THAT THE PARTY IS NOT ENTITLED THERETO

The act of the District Judge in issuing an order to show cause to the Attorney General of the State of Alabama and in thereafter dismissing the petition without an answer or a hearing thereon constituted reversible error.

The statutes controlling the procedure to be followed upon the filing of a petition for *habeas corpus* at the time of the commencement of the present proceedings were

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[12] 324 U. S. 42, 45; see also: *White* v. *Ragen, supra; House* v. *Mayo, supra; Williams* v. *Kaiser,* 323 U. S. 471; *U. S.* v. *Adams,* 320 U. S. 220.

found in Title 28, U. S. C., Section 455 and Section 461, which provided:

> "Allowance and Direction. The Court, or Judge to whom such application is made shall forthwith award a writ of habeas corpus, *unless it appears from the petition itself that the party is not entitled thereto* . . .
> "Summary Hearing; Disposition of a Party. *The Court, or Justice or Judge shall proceed* in a summary way *to determine the facts of the* case *by hearing the testimony* and arguments, and thereupon to dispose of the party as law and justice require." (Italics ours.) [13]

It thus appears that, although the Judge to whom the writ is presented may justifiably refuse to issue the writ or to issue an order to show cause if it appears from the petition itself that the party is not entitled thereto, once he decides to exercise jurisdiction by ordering the respondent to show cause, he adjudges that the petition is sufficient.[14] Having made such judicial determination, the Court was, accordingly, under the duty to require a return or an answer to the order, for the purpose of ascertaining whether or not issues of fact were involved, and, if such issues were found, to hold a hearing thereon and dispose of the case as law and justice require.

In the case of *Walker* v. *Johnston*, 312 U. S. 275, an order

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[13] Cf. new Title 28, United States Code, Section 2243: "A Court, Justice or Judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. . . .

"The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. . . .

"The Court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."

[14] *Holiday* v. *Johnston*, 313 U. S. 342, where the Court stated: "In the present instance, moreover, the Judge, by calling on the respondent to show cause, adjudged that in his view the petition was sufficient. . . ."

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to show cause was issued to the respondent after the petition for writ had been presented. The respondent filed an answer with supporting affidavits and the Court proceeded thereupon to dispose of the case upon the petition and answer. This Court, upon review, after setting forth that the only acceptable procedure under the statute was to grant the petitioner a hearing on the facts once the Court had decided to entertain the petition, stated:

> "Nothing less (than a hearing) will satisfy the command of the statute that the Judge proceed 'to determine the facts of the case by hearing the testimony and arguments' " (312 U. S. 285).

This Court further said, in commenting upon the failure of the District Judge to grant petitioner a hearing in that case:

> "The Government properly conceived that if the petition, the return and the traverse raise substantial issues of fact, it is the petitioner's right to have those issues heard and determined in the manner the statutes prescribe" (312 U. S. 286).

The District Judge, herein by issuing the rule to show cause, indicated his determination that the petition was sufficient; accordingly, his own judicial act shows that this case does not come within the exception of Title 28, U. S. C., Section 555,[15] providing that the writ shall forthwith be awarded "unless it appears from the petition itself that the party is not entitled thereto." The respondent, instead of filing an answer denying the allegations of fact in the petition, or of filing a return setting out the true cause of the detention, filed his pleading making a special appearance "without admitting even for the purpose of argument the allegations of the petition" (R. 8-9). The District Judge, therefore, did not have discretion to refuse to issue the writ, or to

[15] Presently Title 28, United States Code, Section 2243.

require an answer to the order to show cause or to hold a hearing on the merits of the uncontroverted petition, after having found it was sufficient to justify the issuance of the order to show cause.

V

THE PRIOR PROCEEDINGS IN THIS CASE DID NOT RELIEVE THE DISTRICT COURT OF ITS DUTY TO AFFORD PETITIONER A HEARING ON THE ALLEGATIONS OF THE PETITION FOR HABEAS CORPUS

In its order granting respondent's motion to dismiss the petition for writ of *habeas corpus* filed herein, the District Judge stated the following reason for his action.

> "The court is of the opinion that the identical issues sought to be raised by the allegations of the petition have been raised in the Supreme Court of Alabama in coram nobis proceedings by this petitioner; the court further finds that those issues were inquired into by the Supreme Court of Alabama and for reasons and upon proof satisfactory to the State Supreme Court relief was denied to the petitioner; further that the said judgment of the Supreme Court of Alabama was affirmed by the Supreme Court of the United States, and said United States Supreme Court having found that the remedy afforded petitioner in the State Supreme Court was in compliance with the Fourteenth Amendment to the United States Constitution,
>
> "In the exercise of its discretion to grant or refuse the writ of habeas corpus, this court has given weight to the judgments, opinions, and the matters referred to in the opinions of the Supreme Court of Alabama and of the United States Supreme Court in this case, and this court is of the opinion that in view of said opinions and judgments, and the history of said case that a further hearing is not required by the Constitution of the United States" (R. 9-10).

Actually, neither in the *coram nobis* proceedings in the Supreme Court of Alabama, nor in the review of said pro-

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ceedings by the United States Supreme Court has there been a hearing and determination of the issues sought to be raised in the *habeas corpus* petition before the District Court.

In the *coram nobis* proceedings in the Supreme Court of Alabama, the petitioner sought leave to file the said petition for writ of error *coram nobis* in the trial court to inquire into the legality of his conviction on the grounds that his trial, conviction and sentence in said trial court were based upon an alleged confession obtained from him by the use of force, fear and intimidation threatened and inflicted upon him and that, by reason of fear occasioned by threats made against him, he did not inform his attorney first appointed by the court of the involuntary nature of the said alleged confession, nor did he object to its introduction in evidence at the trial. This petition was supported by affidavits which were attached and submitted therewith.

The State of Alabama moved to dismiss the petition, attaching affidavits and exhibits to this motion. The Supreme Court of Alabama, one justice dissenting, without hearing denied leave to file the petition.

Although the Supreme Court of Alabama considered and analyzed the affidavits and exhibits submitted by petitioner and the State in denying the application for leave to file the petition for writ of error *coram nobis*, the petitioner was never afforded a hearing upon the issues which would have been raised if leave had been granted to file in the trial court.

It was error for the District Court herein to measure the availability of *habeas corpus* under federal procedure by the same standards as were applied to *coram nobis* by the Alabama Supreme Court. The *coram nobis* petition was denied by the Alabama Supreme Court on two grounds: (1) that the allegations thereof lacked the probability of

truth,[16] and (2) that the evidence apart from the alleged coerced confession was sufficient to sustain the conviction and that petitioner had presented no meritorious defense thereto.[17] In commenting upon the requirements for *coram nobis*, the Alabama Supreme Court, after discussing the fact that petitioner's conviction had not rested alone upon the alleged coerced confession stated:

> "The court should also bear in mind this writ is only due to be granted where it is made clearly to appear that petitioner has a valid defense." [18]

Clearly, no such strict requirements are necessary for relief by *habeas corpus* in a federal court and the giving of "controlling weight" to the judgment and opinion of the Supreme Court of Alabama was reversible error. As stated by this Court in a recent case: "Habeas corpus is presently available for use by a district court within its recognized jurisdiction *whenever necessary* to prevent an unjust and illegal deprivation of human liberty." (Italics ours.)[19]

This Court in its review of the decision of the Supreme Court of Alabama, specifically refrained from adjudicating the merits of petitioner's case. The Court stated in its opinion: "The question in this case is whether the State of Alabama deprived the petitioner of due process of law . . .

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[16] *Ex parte Taylor*, 249 Ala. 667, 32 So. 2d 659; *cf. Waley* v. *Johnston*, 316 U. S. 101, 104, where this Court said: "True, petitioner's allegations in the circumstances of this case may tax credulity. But in view of their specific nature, . . . and the failure of respondent to deny . . . them specifically, we cannot say that the issue was not one calling for a hearing within the principles laid down in *Walker* v. *Johnston*, 312 U. S. 275, 85 L. Ed. 830, 61 S. Ct. 574. . . . If the allegations are found to be true, petitioner's constitutional rights were infringed."

[17] *Cf. Malinski* v. *New York*, *supra*, and authorities cited under Point I.

[18] *Ex parte Taylor*, *supra*.

[19] *Wade* v. *Mayo*, *supra*.

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when the Supreme Court of that State denied him permission to file a petition for writ of error coram nobis" (*Taylor* v. *Alabama*, 335 U. S. 252).

A close analysis of the majority opinion reveals that the Court was concerned primarily with two questions. First, whether or not Alabama procedure for *coram nobis* constituted due process of law under the Fourteenth Amendment and the case of *Mooney* v. *Holohan, supra;* and second, whether or not the denial of the petition by the Alabama court constituted such an arbitrary action as to amount to a deprivation of due process.

In its opinion, this Court discussed the merits of petitioner's claims but it is important to note that this discussion was for the sole purpose of ascertaining whether or not the Alabama Supreme Court's action was arbitrary. Immediately prior to discussing the merits, this Court stated:

> "The issue before us is not the issue which would have faced the trial court in the event that the Supreme Court of Alabama had granted permission to the petitioner to file his petition for writ of error coram nobis in that court. The proceeding here is not even a review de novo, of the merits of the request made to the Supreme Court of Alabama. The issue before us is limited to a determination of whether, under all the circumstances, the action of the Supreme Court of Alabama . . . not merely had committed error but had deprived the petitioner of life or liberty without due process of law" (*Taylor* v. *Alabama*, 335 U. S. 252, 261-262).

The Court then proceeded to discuss the merits of the petition for the purposes set forth above. Immediately following its discussion of the merits, the Court stated: "For these reasons we conclude . . . that the denial by the Supreme Court of Alabama of the permission thus sought by the petitioner . . . was not, under all the

circumstances, such an arbitrary action as in itself to amount to a deprivation of due process of law."

This analysis of the Court's opinion is substantiated by the concurring opinion by Mr. Justice Frankfurter who stated that since he cannot deem the Alabama court's mode of reasoning as "unsustainable in reason," he is not entitled to reject it and therefore agrees with the majority opinion. But he further stated: "There is not now before us any right that the petitioner may have under the Judicial Code to bring an independent habeas corpus proceeding in the District Court of the United States."

The dissenting opinion by Mr. Justice Murphy also substantiated the analysis of the majority opinion and concluded with this observation:

> "Fortunately, this Court has not yet made a final and conclusive answer to petitioner's claim. All that has been decided here is that the Supreme Court of Alabama did not err in declining to permit him to file a petition for writ of error coram nobis in the Alabama courts. Nothing has been held which prejudices petitioner's right to proceed by way of habeas corpus in a federal district court now that he has exhausted his state remedies. He may yet obtain the hearing which Alabama has denied him" (335 U. S. 279-280).

The aspects of the present petition were not unlike those in the case of *Waley* v. *Johnston*,[20] where this court on certiorari reviewed a district court's denial of a writ for habeas corpus on the ground that an earlier decision of the trial court denying petitioner's application for a writ of *coram nobis* was *res judicata;* this Court stated in its opinion:

> "The earlier application was denied for insufficiency upon its face and without a hearing. There is thus no basis for the holding of the district court that the

[20] 316 U. S. 101.

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denial is res judicata of the present petition." (316 U. S. 101, 105)

As argued above the Alabama Supreme Court denied petitioner's *coram nobis* application because of its insufficiency upon its face and without a hearing. Consequently, the present case comes within the principle thus laid down in the *Waley* case.

In *House* v. *Mayo*, 324 U. S. 42, the procedural issues involved were substantially the same as those here presented. There, as here, the district court was of the opinion that "petitioner has had a full, complete, and competent consideration and decision in the Supreme Court of Florida of all the various matters here sought again to be presented," and was of the opinion that a denial by this Court of a petition for certiorari, filed here after the denial by the Florida Supreme Court of one of the applications for habeas corpus was an expression "of the opinion that no meritorious question is presented by the matters of which petitioner here complains."

This Court puts its decision in the *House* case, granting certiorari, reversing the order of the Court of Appeals and judgment of the District Court, and remanding the case to the District Court, upon the following grounds:

> "But as we have often said, a denial of certiorari by this Court imports no expression of opinion upon the merits of a case. (Cases cited) It is true that where a state court has considered and adjudicated the merits of a petitioner's contentions, and this Court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated. (cases cited) But that rule is inapplicable where, as here, the basis of the state court decision is that the particular remedy sought is not one allowed by state law, for in such a case this Court lacks jurisdiction to review the decision (cases cited)"

In the instant case we submit that the rule stated above also is inapplicable in that, by its denial of the *coram nobis* proceedings, the Supreme Court of Alabama made unavailable to petitioner a consideration and adjudication of the merits of his contentions. Such a consideration and adjudication could be afforded only by the hearing and determination in the trial court of the merits of petitioner's allegations, which hearing and determination became unavailable to petitioner by denial of his application for *coram nobis* proceedings.

Further, it would appear that this Court's previous judgment in the instant case, contrary to the effect imputed to it by the District Court, specifically removed the case from application of the rule when it stated: "The issue before us is not the issue which would have faced the trial court in the event that the Supreme Court of Alabama had granted permission to the petitioner to file his petition for writ of error coram nobis in that court. The proceeding here is not even a review, de novo, of the merits of the request made to the Supreme Court of Alabama."

Therefore, we conclude, as did this Court in the *House* case:

> "The decision of the district court is thus not supported by the grounds assigned for it, and should have been reversed by the court of appeals."[21]

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[21] 324 U. S. 42, 48.

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VI

THIS COURT HAS JURISDICTION TO REVIEW BY CERTIORARI THE ACTION OF THE LOWER FEDERAL COURTS IN DECLINING LEAVE TO APPEAL IN THIS CASE AND SUCH REVIEW EXTENDS TO QUESTIONS ON THE MERITS SOUGHT TO BE RAISED BY THE APPEAL

In view of the errors committed by the Federal District Court herein, the Circuit Court of Appeals and the District Court were under an obligation to issue to petitioner a certificate that probable cause for an appeal exists. Both courts refused such certificate (R. 12, 14) and this refusal may properly be reviewed by this Court upon certiorari.

Title 28 United States Code, section 1651(a)[22] provides in part that this Court may issue "all writs necessary or appropriate" in aid of its jurisdiction. In interpreting this provision, this Court has held that it extends to a review of lower federal court proceedings of the type that obtained in this case.[23]

In the case of *House* v. *Mayo, supra,* a petition for habeas corpus in the United States District Court was denied without a return or a hearing and a certificate of probable cause for an appeal to the Circuit Court of Appeals was likewise denied both by the district and circuit courts. Petitioner thereafter applied to this Court for writ of certiorari to review the action of the lower federal courts. This Court, under section 262 of the United States Code[24] granted a writ of certiorari to review the action of the Court of Appeals in declining to allow an appeal to it. This Court stated that their review extended not only to a determina-

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[22] Formerly 28 United States Code, section 262.

[23] *House* v. *Mayo, supra; Re 620 Church St. Building Corp.,* 299 U. S. 24; *Stefflер* v. *U. S.,* 319 U. S. 38; *Wells* v. *U. S.,* 318 U. S. 257; *Holiday* v. *Johnston,* 313 U. S. 342.

[24] Presently Title 28 United States Code, section 16518.

tion of whether the Circuit Court of Appeals abused its discretion in refusing to allow the appeal but extended also to "questions on the merits sought to be raised by the appeal."[25]

The procedure in the instant case was substantially identical with that in the *House* case and accordingly the present proceedings are within the jurisdiction of this Court.

Conclusion

To date, petitioner has unsuccessfully sought a hearing at which he could present evidence in support of his contentions that his conviction and detention are in violation of the Federal Constitution. As required by the procedure in the Federal courts, he exhausted all state remedies available to him without securing a hearing. This Court reviewed the procedure by which petitioner had unsuccessfully sought a hearing and found that the procedure did not violate the Fourteenth Amendment. The United States District Court has, by an ironic twist of reasoning, found that the very procedures which the petitioner was required to follow before applying to the District Court for a writ of habeas corpus have deprived petitioner of his right to a hearing in the federal courts.

The record is plain that petitioner has had no hearing on the merits and whatever the pre-conceived notion of the District Judge as to the validity of petitioner's contentions, no prior refusal of a state court to grant petitioner a hearing upon the same issue could relieve the District Court of its duty to inquire into the merits for itself.

This Court must once more reaffirm the fundamental role of the writ of habeas corpus in the scheme of human liberty by establishing that a federal district court may not refuse

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[25] *House* v. *Mayo, supra, Holiday* v. *Johnston, supra, Stefler* v. *U. S.*

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to make an independent investigation into the merits of a petition with the excuse that a state court has found the claim of right so insubstantial as not to require a hearing.

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FRANK D. REEVES,
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Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

NO. 321 MISCELLANEOUS

SAMUEL TAYLOR,
Petitioner

VS.

TENNYSON DENNIS, WARDEN,
ALABAMA STATE PENITENTIARY,
KILBY, ALABAMA,
Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

NO. 121 MISCELLANEOUS

SAMUEL TAYLOR,
Petitioner

VS.

TENNYSON DENNIS, WARDEN,
ALABAMA STATE PENITENTIARY,
KILBY, ALABAMA,
Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF THE COURT BELOW

We do not find that the opinion or judgment of the United States District Court for the Middle District of Alabama, Northern Division, rendered on July 7, 1948, has been officially reported. Neither do we find that the order of the United States Circuit Court of Appeals made on July 16, 1948, has been officially reported. We are informed that copies of the following are in the record:

1. Judgment and opinion of District Court dismissing petition for habeas corpus dated July 7, 1948.

2. Order of District Court denying certificate of probable cause dated July 17, 1948.

3. Order of Judge of United States Circuit Court of Appeals (C. C. A. 5th) denying petition for certificate of probable cause dated July 16, 1948.

Opinions rendered prior to this proceeding are reported as follows:

Taylor v. State, 249 Ala. 130, 30 So. 2d 256, affirming conviction for rape.

Ex parte Taylor. Taylor v. State, 249 Ala. 667, 32 So. 2d 659, denying leave to petition for writ of error coram nobis.

Taylor v. Alabama, Supreme Court of the United States, No. 721, October Term, 1947, rendered June 21, 1948, 92 L. Ed. 1394, affirming coram nobis proceedings, supra.

II.

JURISDICTION

The petitioner has applied for writ of certiorari from this Court under provisions of Title 28, U. S. C. A., Section 1651(a), to review the judgment of the United States District Court for the Middle District of Alabama, Northern Division, rendered July 7, 1948, dismissing petitioner's petition for writ of habeas corpus, and the order of said District Court made on July 17, 1948, denying a certificate of probable cause for appeal; also to review the order made July 16, 1948, by a judge of the United States Circuit Court of Appeals, Fifth Circuit, denying a certificate of probable cause for appeal. See

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House v. Mayo (1944), 324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517, rehearing denied 324 U. S. 886, 89 L. Ed. 1435, 65 S. Ct. 689.

III.

STATEMENT OF THE CASE

Petitioner, Samuel Taylor, was convicted in the Circuit Court of Mobile County, Alabama, for rape. He appealed to the State Supreme Court where his conviction was affirmed. *Taylor v. State*, 249 Ala. 130, 30 So. 2d 256. Taylor then applied to the State Supreme Court for leave to petition the trial court for a writ of error coram nobis, alleging for the first time that a confession used in evidence at his trial was obtained by force. The State Supreme Court denied leave to file a petition in the trial court. *Ex parte Taylor. Taylor v. State*, 249 Ala. 667, 32 So. 2d 659. On said coram nobis proceedings in the Supreme Court of Alabama, the petitioner submitted three affidavits in support of his petition alleging that the confession was obtained by force. The State, in opposition to this evidence, presented eight photographs of petitioner's body showing that petitioner was not mistreated at the time of the confession. The Alabama Supreme Court, in considering this evidence, together with other facts contained in the trial record, which contradicted petitioner's allegations of an involuntary confession, found that petitioner's allegations

(1) did not contain the probability of truth, and

(2) were unreasonable.

On certiorari, the United States Supreme Court affirmed the decision of the State Supreme Court. *Taylor v. Ala-*

bama, No. 721, October Term, 1947, decided June 21, 1948. —— U. S.——, 92 Ed. 1394.

Taylor then filed petition for writ of habeas corpus in the United States District Court. The allegations of this petition were substantially the same, if not identical, with the allegations in his former petition for writ of coram nobis. The petition was dismissed on motion of the State (representing the respondent, Warden of Kilby Prison). The grounds for dismissing the petition are stated in the judgment and opinion of the District Court dated July 7, 1948 (District Court Record). Certificate of probable cause for appeal was denied by the District Court, and later by a judge of the Fifth Circuit Court of Appeals.

Petitioner applied for certiorari in the United States Supreme Court to review:

1. The dismissal of his petition for habeas corpus in the District Court.

2. The denial of a certificate of probable cause by said District Court and the Circuit Court of Appeals.

The United States Supreme Court granted certiorari on December 13, 1948.

BRIEF AND ARGUMENT

I.

On habeas corpus proceedings, the petition includes those facts of which the court may take judicial cognizance.

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Cramer v. Washington,
168 U. S. 124, 42 L. Ed. 407.

Andersen v. Treat,
172 U. S. 24, 29, 31, 43 L. Ed. 351.

Wells v. United States,
318 U. S. 257, 87 L. Ed. 746.

Rookard v. Huff,
145 F. 2d 708.

Slaughter v. Wright,
135 F. 2d 613.

Beard v. Bennett,
114 F. 2d 578.

II.

It is not improper for a federal district court to issue a rule to show cause when petition for writ of habeas corpus is filed.

Walker v. Johnson,
312 U. S. 275, 85 L. Ed. 830.

Ex Parte Yarbrough,
110 U. S. 651, 653, 28 L. Ed. 274.

Mooney v. Holohan,
294 U. S. 103, 111, 79 L. Ed. 791, 793.

III.

Where a state court has considered and adjudicated the merits of a petitioner's contentions, and the United States Supreme Court has reviewed the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated.

House v. Mayo,
324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517.

White v. Ragen,
324 U. S. 760, 89 L. Ed. 1353.

Ex Parte Hawk,
321 U .S. 114, 88 L. Ed. 572.

It is not the function or purpose of habeas corpus proceedings to serve as an appeal or writ of error, nor to retry issues of fact or law previously adjudicated.

Glasgow v. Mayer,
225 U. S. 420, 429, 32 S. Ct. 753, 56 L. Ed 1147.

Re James Lincoln,
202 U. S. 178, 50 L. Ed. 984, 26 S. Ct. 602.

Harlan v. McGowin,
218 U. S. 442, 54 L. Ed. 1101, 31 S. Ct. 44, 21 Ann. Cas. 849.

Dorsey v. Gill,
148 F. 2d 857, cert. den. 325 U. S. 890, 89 L. Ed 2003, 65 S. Ct. 1580.

IV.

Although the doctrine of res judicata does not apply in habeas corpus cases, the district judge may exercise his discretion and give controlling weight to prior proceedings.

Salinger v. Loisel,
265 U. S. 224, 68 L. Ed. 989.

Wong Doo v. United States,
265 U. S. 239, 68 L. Ed. 999.

ARGUMENT

I.

When the petition for writ of habeas corpus was filed in the District Court, it could not be considered solely on the allegations included on the face of the petition. Besides those allegations reciting that petitioner was convicted by the use of an involuntary confession, and that he failed to disclose such alleged facts because of ignorance, are the further allegations reciting prior proceedings in the case including:

1. A trial in the Circuit Court of Mobile County, Alabama.
2. An appeal to the Supreme Court of Alabama.
3. Coram nobis proceedings in the Supreme Court of Alabama.
4. A review of said coram nobis proceedings by the United States Supreme Court.

Since these prior proceedings in the same case are referred to in the petition itself, the District Court could consider the record and opinions in such prior proceedings. *Cramer v. Washington*, 168 U. S. 124, 42 L. Ed. 407. The District Court was authorized to take judicial cognizance of all prior proceedings. *Anderson v. Treat*, 172 U. S. 24, 43 L. Ed. 351; *Wells v. United States*, 318 U. S. 257, 87 L. Ed. 746; *Beard v. Bennett*, 114 F. 2d 578; *Slaughter v. Wright*, 135 F. 2d 578.

In considering the action of the District Court, therefore, it should be kept in mind that the court was cognizant of all prior proceedings in the case.

II.

When a petition for writ of habeas corpus is filed in a district court, it is permissible for the court to

issue a rule to show cause instead of issuing the writ forthwith. *Walker v. Johnson*, 312 U. S. 275, 85 L. Ed. 830; *Ex Parte Yarbrough*, 110 U. S. 651, 28 L. Ed. 274; *Mooney v. Holohan*, 294 U. S. 103, 79 L. Ed. 791.

In *Walker v. Johnson*, supra, it was stated:

> "Since the allegations of such petitions are often inconclusive, the practice has grown up of issuing an order to show cause, which the respondent may answer. By this procedure the facts on which the opposing parties rely may be exhibited, and the court may find that no issue of fact is involved. In this way useless grant of the writ with consequent production of the prisoner and of witnesses may be avoided where from undisputed facts or from incontrovertible facts, such as those recited in a court record, it appears, as a matter of law, no cause for granting the writ exists. . . . . This practice has long been followed by this court and by the lower courts."

The procedure adopted by the District Court in issuing a rule to show cause was not without precedent.

III.

Where a state court has considered and adjudicated the merits of a petitioner's contentions, and the United States Supreme Court has reviewed the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated.

It is *not* intended here to argue that the doctrine of res judicata applies in habeas corpus cases. Neither do we intend to argue that the Federal District Court

was without jurisdiction to hear and determine this case. On the contrary, we do argue that in exercising a sound discretion, the District Court did not abuse such discretion in giving controlling weight to the prior proceedings in this case and in dismissing the petition for habeas corpus.

The allegations in the petition for writ of habeas corpus in the District Court were substantially the same allegations appearing in the prior petition to the Supreme Court of Alabama in coram nobis proceedings. Both petitions alleged in substance (1) that Taylor was convicted on the basis of a confession, (2) that the confession was obtained by force, and (3) that because of ignorance Taylor failed to disclose the facts to his trial counsel. (See District Court Record.) It should be added that, in the prior petition for coram nobis in the State Supreme Court, there were included the further allegations that, during the entire time of the trial and imprisonment, petitioner failed to disclose the fact of his mistreatment, not only because of ignorance but also because of fear of further reprisals. These specific allegations, together with an allegation concerning perjured testimony, which this Court found to be unsupported (*Taylor v. Alabama*, No. 721, October Term, 1947), were deleted from the petition filed in the District Court.

When this petition for habeas corpus was filed, it appeared from the face of the petition that there had been prior proceedings, coram nobis proceedings, in the State Supreme Court. The petition itself shows that Taylor had already presented the same grounds to the State Supreme Court and that the United States Supreme Court had affirmed the State Supreme Court's denial of relief. Under such circumstances, the District Court issued a rule to show cause why the writ of habeas corpus should not issue. We have shown that this procedure is not improper (respondent brief, p. 6, 7).

In response to the rule to show cause, the respondent filed a motion in the *nature of* a plea of res judicata. The motion simply called on the District Judge to take judicial cognizance of prior proceedings, to consider the results and findings of the prior proceedings in exercising his discretion to grant or refuse the discharge of Taylor. The District Judge decided to give controlling weight to the prior proceedings and refused to discharge the petitioner.

We contend that the District Court did not err in dismissing the petition. The District Court was presented with the same allegations which had been presented to the State Supreme Court. The State Court had already held a hearing on the merits. At that hearing, counsel had the opportunity to be heard. Petitioner's counsel submitted affidavits as proof in support of the allegations of his petition for coram nobis while the State introduced proof, consisting of photographs, in opposition to the allegations of the petition. The State Supreme Court, in considering the coram nobis case, referred to the trial record for further facts. There was nothing to prevent petitioner in that proceeding from presenting the State Court with more proof or evidence supporting the allegations of his petition.

As to the allegations in the petition for coram nobis, the Alabama Supreme Court concluded that ". . . the averments of the petition are unreasonable and that there is no probability of truth contained therein . . ." *Ex Parte Taylor. Taylor v. State*, 249 Ala. 667, 32 So. 2d 659. After a full review of this State decision, the United States Supreme Court held that:

1. Alabama did not deprive petitioner of due process of law in this case.

2. Alabama coram nobis procedure is adequate and constitutes due process of law in this case (*Taylor v. Alabama*, No. 721, October Term, 1947).

Clearly, the opinion of the United States Supreme Court decided that Taylor was not held by Alabama in violation of his rights under the due process clause of the Constitution. By what process of reason could the District Judge decide otherwise?

In the case of *Ex Parte Hawk*, 321 U. S. 114, 88 L. Ed. 572, it was stated:

> "Where the state courts have considered and adjudicated the merits of his contentions, and this court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated. Salinger v. Loisel, 265 U. S. 224, 230-232, 68 L. Ed. 989, 996, 997, 44 S. Ct. 519. But where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy, see Mooney v. Holohan, supra (294 U. S. 115, 79 L. ed. 795, 55 S. Ct. 340, 98 A. L. R. 406), or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate, cf. Moore v. Dempsey (261 U. S. 86, 67 L. Ed. 543, 43 S. Ct. 265); Ex parte Davis, 318 U. S. 412, 87 L. ed. 868, 63 S. Ct. 679, a federal court should entertain his petition for habeas corpus else he would be remediless. In such a case he should proceed in the federal district court before resorting to this Court by petition for habeas corpus."

Although the *Hawk case*, supra, was decided on the grounds that the petitioner had not exhausted his state

remedies, the above rule states that federal courts, on habeas corpus proceedings involving state prisoners, re-examine questions adjudicated only in two instances: (1) Where there is no state remedy. (2) Where the state remedy is unavailable or inadequate.

This Court, in *Taylor v. Alabama*, supra, excluded both of those instances. Taylor was not denied relief by Alabama because there was no remedy—the remedy of coram nobis was open to him. He was not denied relief because this remedy was inadequate—it was held to be adequate. He was denied relief because he could not convince the Alabama court that he alleged true facts. Relief was denied to Taylor not because of an infirmity in Alabama remedies, but because of infirmities in Taylor's allegations.

If the rule announced in *Ex Parte Hawk*, supra, is followed, the District Court did not err in refusing to re-examine the issues.

The rule was restated in *White v. Ragen*, 324 U. S. 760, 89 L. Ed. 1353, as follows:

> "If this Court denies certiorari after a state court decision on the merits, or if it reviews the case on the merits, a Federal district court will not usually re-examine on habeas corpus the questions thus adjudicated."

The case of *House v. Mayo*, 324 U. S. 42, 89 L. Ed. 739, 65 S. Ct. 517, rehearing denied 324 U. S. 886, 89 L. Ed. 1435, 65 S. Ct. 689, bears a close analogy to the present case. In that case, House, a state prisoner, applied for habeas corpus in a United States district court after the state courts had denied relief on application for habeas corpus and coram nobis and after the United

States Supreme Court had denied certiorari without opinion.

The District Court did not require a return and dismissed the petition without a hearing holding that the State Supreme Court had given consideration to the issues raised by the petition; further that the United States Supreme Court, in denying certiorari, indicated that no meritorious question was presented. As in the present case, certificate of probable cause was denied.

When this Court reversed the ruling of the District Court on certiorari, it pointed out that the decision of the District Court was not supported by the grounds assigned for it. This Court found that the State Court dismissed both habeas corpus and coram nobis proceedings without considering the merits and because the *state remedy sought was not the appropriate one under state law.*

In the case now before this Court, the decision of the Alabama Supreme Court was on the merits after a hearing and the consideration of evidence. Taylor's petition for coram nobis was not denied because it was not the appropriate one under state law, but because the State Court found that said petition did not contain a probability of truth.

In the present case, therefore, the District Court's decision is supported by the grounds assigned, namely, that the issues have been decided.

Neither can it be said that the District Court gave undue weight to the opinion of this Court in *Taylor v. Alabama*, supra, for that was a decision on the merits and unlike the mere denial of certiorari which occurred in the *House case*, supra.

Thus the rule recited in the *Hawk case*, supra, and restated in the *House case*, supra, is applicable to the present case:

> "It is true that where a state court has considered and adjudicated the merits of a petitioner's contentions, and this Court has either reviewed or declined to review the state court's decision, a federal court will not ordinarily re-examine upon writ of habeas corpus the questions thus adjudicated."

It is not the function or purpose of habeas corpus proceedings to serve as an appeal or writ of error nor to retry issues of fact or law previously adjudicated. *Glasgow v. Mayer*, 225 U. S. 420, 429, 56 L. Ed. 1147, 32 S. Ct. 753; *Re James Lincoln*, 202 U. S. 178, 50 L. Ed. 984, 26 S. Ct. 602; *Harlan v. McGowin*, 218 U. S. 442, 54 L. Ed. 1101, 31 S. Ct. 44, 21 Ann. Cas. 849; *Dorsey v. Gill*, 148 F. 2d 857, cert. den. 325 U. S. 890, 89 L. Ed. 2003, 65 S. Ct. 1580.

If this Court reverses the District Court and directs the District Court to hear evidence in this case, such a ruling will have the effect of overruling two well considered opinions of this Court: *Hysler v. Florida*, 315 U. S. 411, 86 L. Ed. 932, 62 S. Ct. 688; *Taylor v. Alabama*, supra. Those cases decided that due process is not violated when a state requires a prisoner to satisfy a bench of judges that he has a meritorious claim when such prisoner challenges the essential justice of his conviction. In both of those cases, this Court refused to interfere when a state prisoner, after trial and after appeal in state courts, could not convince the State Supreme Court that his claim or challenge to the essential justice of his conviction was meritorious. In both of those cases, this Court explored the very foundation of the State Court's denial of relief. In each case this Court found

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that the State Supreme Court was justified, on reasonable grounds, in refusing a retrial. Essentially, the holding in each case is that after trial, establishment of guilt, appeal, and affirmance a petitioner should not be allowed to "trifle with justice" by attempting to prove allegations in coram nobis proceedings when those allegations are patently unreasonable, insubstantial and lack the probability of truth. Certainly, a review of the very foundation of the State Court's decision by this Court affords ample assurance that petitions for coram nobis will not be arbitrarily dismissed. Something must be left to the State and the discretion of its Supreme Court.

If Taylor's petition for coram nobis in the Alabama Supreme Court was insubstantial, in view of the trial record, the affidavits to the petition, and the photographs shown as exhibits—if that petition was unreasonable and lacked a probability of truth—if that petition was another example of "trifling with justice," then the same is true of the later petition for habeas corpus in the District Court. Nothing new has been added—the petitions are substantially identical. Both the State Supreme Court and this Court have rejected the one. Will the District Court be compelled to hear evidence on the other?

Should the District Court be ordered by this Court to hear evidence on this petition for habeas corpus, such a proceeding will amount to an appeal from or retrial of the Alabama coram nobis proceedings. The issues are identical.

If the finality or conclusiveness of the judgment of the State Supreme Court on denial of relief in coram nobis proceedings may be re-litigated in a federal district court, then in fact the State Supreme Court has no power to reject a petition for coram nobis regardless of its false and insubstantial allegations. The power of the

State Supreme Court to deny such petitions without violating due process is asserted in both the *Hysler case*, supra, and the *Taylor case*, supra. A re-trial of the issue in the District Court would make both decisions ineffective.

IV.

Although the doctrine of res judicata does not apply in habeas corpus proceedings, the district judge may exercise his discretion and give controlling weight to prior proceedings.

The opinion of the District Judge dismissing the petition for habeas corpus recites that:

> "In the exercise of its discretion to grant or refuse the writ of habeas corpus, this court has given weight to the judgments, opinions and the matters referred to in the opinions of the Supreme Court of Alabama and of the United States Supreme Court in this case, and this Court is of the opinion that in view of said opinions and judgments, and the history of said case that a further hearing is not required by the Constitution of the United States."

This Court has held that on habeas corpus proceedings a court should not apply the strict rule of res judicata, and that each petition should be disposed of "in the exercise of a sound judicial discretion, guided and controlled by a consideration of whatever has a rational bearing on the propriety of the discharge sought. Among the matters which may be considered, and even given controlling weight, are . . . (b) a prior refusal to discharge on a like application." *Salinger v. Loisel*, 265

U. S. 224, 68 L. Ed. 989; *Wong Doo v. United States*, 265 U. S. 239, 68 L. Ed. 999.

It is urged that the District Court was entitled to give much, and even controlling, weight to the decision of the Alabama Court denying petition for coram nobis and the decision of this Court reviewing that decision. We have already pointed out that the petition in the State Court and that in the Federal Court were substantially the same.

CONCLUSION

Samuel Taylor has been tried, convicted of rape, and has been given the death penalty. His conviction has been affirmed by the Supreme Court of Alabama. The conviction has not been reversed. Taylor has, by proper state procedure, claimed that his conviction was in violation of civilized standards, in that a confession extorted by force was used against him. Alabama has decided that the claim is not worthy of belief. The United States Supreme Court has decided that Alabama's rejection of the claim was not unreasonable. We respectfully submit that the Fourteenth Amendment requires no further inquiry, and that this Court should affirm the judgment of the District Court dismissing the petition for habeas corpus.

Respectfully submitted,

A. A. CARMICHAEL,
Attorney General of Alabama,

BERNARD F. SYKES,
Assistant Attorney General,
Counsel for Respondent.

I hereby certify that I have forwarded a copy of the foregoing brief to Thurgood Marshall, 20 West Fortieth Street, New York, N. Y., attorney for petitioner, on this the 6th day of January, 1949.

A. A. CARMICHAEL,
Attorney General of Alabama,
Counsel for Respondent.

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1948

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

TENNYSON DENNIS, Warden Alabama State Penitentiary, Kilby, Alabama,

Respondent.

PETITION FOR REHEARING AND FURTHER RELIEF

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Supreme Court of the United States

October Term, 1948

No. 121 Miscellaneous

SAMUEL TAYLOR,

Petitioner,

vs.

TENNYSON DENNIS, Warden Alabama State Penitentiary, Kilby, Alabama,

Respondent.

PETITION FOR REHEARING AND FURTHER RELIEF

To the Honorable Chief Justice of the United States and the Justices of the Supreme Court of the United States:

Petitioner respectfully presents this petition pursuant to Rule 33 of the Rules of this Court for a rehearing of the above-entitled cause decided on the 7th day of February, 1949, by an evenly divided Court of eight (8) Justices. Petitioner respectfully submits the following reason why the relief prayed for should be granted:

On November 19, 1946, petitioner was sentenced to death by electrocution upon a conviction of rape in the Circuit Court of Mobile County, Alabama, which judgment was affirmed by the Supreme Court of Alabama on April 24, 1947. *Taylor* v. *State*, 249 Ala. 130, 30 So. (2d) 256. On November 13, 1947, that Court denied petitioner permission to file a petition for writ of error *coram nobis* in the trial

court, *Ex Parte Taylor,* 249 Ala. 670, 32 So. (2d) 659, which decision was subsequently affirmed by this Court. *Taylor* v. *Alabama,* — U. S. —, 92 L. ed. (Adv. Op. 1394).

In the majority opinion of this Court it was made clear that the review of the judgment was limited to the procedural question of whether or not the *coram nobis* remedy as used in Alabama denied petitioner due process of law. It was held that the procedure was in conformity with the due process clause and that the Supreme Court of Alabama did not deny petitioner due process by refusing permission to file for *coram nobis* after taking into consideration the entire record of the original trial along with certain photographs produced by the State of Alabama and supported by affidavit. The majority opinion, however, was careful to point out that: "If the new petition (seeking permission to file petition for writ of error *coram nobis*) and its supporting affidavits stood alone or had to be accepted as true, the issue would be materially different from what it is." *Taylor* v. *Alabama,* 92 L. ed. (Adv. Op.) at page 1401.

Mr. Justice FRANKFURTER in concurring pointed out that: "In reaching such a conclusion the Supreme Court of Alabama was entitled to consider the circumstances of the original trial, the manner of its conduct by the trial judge, the professional ability with which the defendant was represented, the behavior of the accused throughout the proceedings, and, in the light of all these circumstances, the weight to be attached to the affidavits on which his present petition is based." Mr. Justice FRANKFURTER concluded: "But this merely carries me to sustaining the judgment of the Alabama Supreme Court. There is not now before us any right that the petitioner may have under the Judicial Code to bring an independent habeas corpus proceeding in the District Court of the United States."

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Mr. Justice MURPHY in his dissenting opinion in which Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE concurred pointed out that "Fortunately, this Court has not yet made a final and conclusive answer to petitioner's claim. . . . Nothing has been held which prejudices petitioner's right to proceed by way of habeas corpus in a federal district court, now that he has exhausted his state remedies. He may yet obtain the hearing which Alabama has denied him."

Thereupon, petitioner filed a verified petition for writ of habeas corpus in the United States District Court for the Middle District of Alabama (R. 1-5), and a rule to show cause was issued by that court. The Attorney General of the State of Alabama filed a pleading captioned "Return to Rule" (R. 8-9). This had the force and effect of a motion to dismiss and was so recognized by the court and the Attorney General of Alabama (R. 12). Under these circumstances, the allegations of the verified petition had to be accepted as true at that stage of the proceedings. A hearing was held on the verified petition and the motion to dismiss. Under normal procedure, such a hearing is limited to legal arguments and was so limited in this case. No pleadings were filed by the State of Alabama to bring to issue the allegations in the verified petition. It cannot be argued that at this stage of the proceeding, petitioner was obliged to or should have been prepared to produce testimony.

Orderly procedure permits testimony only after the respondent has made a full and complete return and has placed in issue the factual basis for the petition for writ of habeas corpus. The record in the original trial was not before the district court. Respondents had filed neither a return within the accepted meaning of that term, nor an answer, nor any denial of the factual basis for the petition.

The decision of the district judge was allegedly based upon the legal insufficiency of the petition and was admittedly determined by: (a) the verified petition, and, (b) the opinions of the Supreme Court of Alabama and of this Court in the *coram nobis* case.

In applying to this Court for a writ of certiorari petitioner relied upon principles of law which heretofore had been considered clear and well established:

a. Use by a state of a coerced confession to obtain a conviction for a crime is a violation of the due process clause of the Fourteenth Amendment.

Lee v. *Mississippi*, 322 U. S. 722;

Haley v. *Ohio*, 332 U. S. 596;

Malinski v. *New York*, 324 U. S. 401;

Ashcraft v. *Tennessee*, 322 U. S. 143;

Ward v. *Texas*, 316 U. S. 547;

Lisenba v. *California*, 314 U. S. 219;

Vernon v. *Alabama*, 313 U. S. 547;

White v. *Texas*, 310 U. S. 530;

Chambers v. *Florida*, 309 U. S. 227;

Brown v. *Mississippi*, 313 U. S. 547.

b. A habeas corpus proceeding in the Federal District Court is the proper method of attacking a conviction obtained in a state court in violation of defendant's constitutional rights, after the exhaustion of state remedies.

White v. *Ragen*, 324 U. S. 760;

Wade v. *Mayo*, 332 U. S. 672;

House v. *Mayo*, 324 U. S. 42;

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Ex parte Hawk, 321 U. S. 114;

Mooney v. *Holohan*, 294 U. S. 103;

Title 28, United States Code, Sections 2241-2255.

c. The allegations of a petition for habeas corpus in Federal courts must be taken as true in the absence of an answer or a hearing.

White v. *Ragen*, 324 U. S. 760;

House v. *Mayo*, 324 U. S. 42;

Williams v. *Kaiser*, 323 U. S. 471;

U. S. v. *Adams*, 320 U. S. 220.

d. The Federal District Court is under the duty to forthwith award the writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto.

Holiday v. *Johnston*, 313 U. S. 342;

Price v. *Johnston*, — U. S. —; 92 L. ed. (Adv. Op.) 993;

Von Moltke v. *Gillies*, 332 U. S. 708;

Marino v. *Ragen*, 332 U. S. 561;

U. S. v. *Adams*, 320 U. S. 220;

Ex parte Quirin, 317 U. S. 1;

Walker v. *Johnston*, 312 U. S. 275;

Title 28, United States Code, section 2243 (then, 28 U. S. C. #461).

e. The prior proceedings in this case did not relieve the District Court of its duty to afford petitioner a hearing on the allegations of the petition for habeas corpus.

House v. *Mayo*, 324 U. S. 42;

Waley v. *Johnston*, 316 U. S. 101.

These principles of law heretofore considered clear and well established are inextricably involved in this case. The decision by an equally divided court has cast grave doubt and confusion upon these principles.

The case was placed on the summary docket, thereby limiting argument to one-half hour by one attorney. This Court denied the request of attorneys for petitioner that two attorneys be permitted to argue the case for a half hour each. The respondent did not appear for argument so that the entire argument was limited to one-half hour.

Less than a week after argument, the Court entered its *per curiam* decision, affirming the judgment by an equally divided court in this, "a matter of life and death, a matter of constitutional importance". (Mr. Justice MURPHY in dissenting opinion.)

This case imperatively requires rehearing and final disposition of the case by majority vote of this Court. This case reached the Court by petition for certiorari, not on appeal. The review thus came to petitioner because a sufficient number of this Court deemed the specific questions presented to be of sufficient general importance to require decision by this Court. The *per curiam* order of affirmance by an equally divided court fails to supply that decision. Instead it leaves the law of this case in a state of confusion and casts doubt on the applicability of the principle involved to other cases.

For many decades, the practice has been followed, whenever practicable, of having questions of the nature involved in this case heard by the full court so that a judgment therein might be by a majority of the Court. *Brisko* v. *Commonwealth Bank of Kentucky*, 33 U. S. (8 Pet.) 118; *New York* v. *Millan*, 33 U. S. (8 Pet.) 120; *Home Ins. Co. of New York* v. *New York*, 119 U. S. 129, 148; 122 U. S. 636; 134 U. S.

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594; *Polack* v. *Farmers Loan and Trust Co.*, 157 U. S. 429, 586; 158 U. S. 601.

Mr. Justice BLACK did not participate in either the hearing of argument or the decision in this case, and we respectfully submit that for the reasons set out above, a rehearing should be granted in this case in order to give to Mr. Justice BLACK an opportunity to reconsider his position in the light of the equally divided Court so that the doubt and confusion as to the principles of law involved may be resolved one way or the other. The precedent for such action has been recognized in the case of *Hirota* v. *General MacArthur*, 93 L. ed. (Adv. Op.) 119 and the granting of a rehearing in the case of *Marzani* v. *United States*, — U. S. —, 93 L. ed. —.

The opinion of this Court in the first *Taylor* case did not pass upon the constitutional question as to whether or not the conviction of Samuel Taylor was based upon a denial of due process of law. The decision of this Court in the instant case leaves this question as well as the procedural question in doubt. Unless these points are clearly decided in this case they can never be decided. There is now no other judicial remedy open to petitioner to prevent his death by electrocution.

The *per curiam* order of the Court in this case does not disclose the reasons for Mr. Justice BLACK's nonparticipation. Whatever they may be, petitioner is convinced that if upon reconsideration Mr. Justice BLACK were to agree to hear and participate in the decision of this case, petitioner would thereby be afforded a full and complete hearing and the possibility of a definitive determination of the issues in this case so as to remove the doubt now existing as a result of the present *per curiam* order. If Mr. Justice BLACK sits and hears argument on this case it might not be necessary for him to participate in the final decision in order to

have a majority decision. In the *Hirota* case, Mr. Justice JACKSON while agreeing to hear argument did not participate in the final determination of the case because a majority decision was possible without his participation.

Prior to the decision in this case the law was clear that, after state remedies had been exhausted by a petitioner without a hearing on the merits of claimed violations of the Constitution, United States District Courts were prohibited from dismissing a petition for habeas corpus sufficiently alleging facts to show such constitutional violation without a hearing on the merits. *Ex Parte Hawk, supra,* and *White* v. *Ragen, supra,* and as modified by *House* v. *Mayo, supra,* and *Wade* v. *Mayo, supra.* The order of this Court in the instant case leaves an unresolved doubt, therefore as to the present availability of habeas corpus upon the exhaustion of state remedies in the process of which no hearing on the merits was given. This doubt is particularly strong when the opinion of the District Court herein and the opinion of this Court in *Taylor* v. *Alabama* are considered together.

The order of this Court creates doubt concerning the principle of the truth of uncontroverted facts in a Petition for Writ of Habeas Corpus. From an examination of the cases *Walker* v. *Johnson, supra; Waley* v. *Johnston, supra; Holiday* v. *Johnston, supra; Johnson* v. *Zerbst,* 304 U. S. 458; *Smith* v. *O'Grady,* 312 U. S. 329, it was clear that the uncontroverted facts in a petition for writ of habeas corpus to a federal court must be taken as true in the absence of an answer or a hearing. In response to the rule to show cause in the Court below, the State of Alabama did not submit an answer nor was a hearing granted upon the facts of the petition by the Court. There can be no question but that the allegations of such petition, if true, sufficiently set forth facts constituting a violation of constitutional rights by a state court in the trial of the petitioner. The District

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Judge, however, upon receipt of a motion to dismiss, which, for all intents and purposes admits the truth of such allegations, refused to accept the allegations as true and without more concluded rather "that a *further* hearing is not required by the Constitution of the United States". (Italics ours.)

The Court's *per curiam* order of February 7, it is submitted, places an unwaranted effect upon the decision in *Mooney* v. *Hollahan, supra,* insofar as that case requires that state courts, equally with federal courts, provide a remedy whereby one claiming to have been convicted in violation of basic constitutional rights may have such claim judicially tested. The effect of the order of affirmance of this Court is to give the courts of Alabama the sole jurisdiction for entertaining such applications according to Alabama's *coram nobis* standard.

The order of the Court in effect further completely bars the remedy of and the standards of habeas corpus in the federal courts in all circumstances to any person detained by authority of an Alabama state court after disposal of petition for permission to file for *coram nobis.* The order further gives sanction to the Alabama *coram nobis* practice of requiring a petitioner to prove his innocence as a prerequisite to obtaining a hearing on his claim of violation of constitutional rights. Clearly, as pointed out in petitioner's brief and in argument before the Court, no such rule had heretofore existed in the federal courts.

The order of the Court further gives sanction to Alabama's practice of speculating on the verity of the allegations of a petition for *coram nobis.* While it may be admitted that Alabama has the right to set up such procedure as it may deem appropriate subject to the limitations of due process for the consideration of claims such as the one which petitioner makes, it is submitted that the intent of the *Mooney* v. *Hollahan* doctrine was not to bar completely

the right to federal habeas corpus by a state prisoner, unless he had obtained in the state court, through habeas corpus, *coram nobis* or other similar procedure, a hearing on the merits of his petition according to the standards which prevail in the federal courts on habeas corpus.

In *Waley* v. *Johnston*, 316 U. S. 101, 104, this Court stated: "True, petitioner's allegations in the circumstances of this case may tax credulity. But in view of their specific nature, . . . and the failure of respondent to deny . . . them specifically, we cannot say that the issue was not one calling for a hearing within the principles laid down in *Walker* v. *Johnston*, 312 U. S. 275, 85 L. Ed. 830, 61 S. Ct. 574. . . . If the allegations are found to be true, petitioner's constitutional rights were infringed."

The decision of the District Court denied a hearing on the merits and dismissed the petition on the grounds that the issues had been disposed of in the *coram nobis* proceedings. Thus, instead of applying the standards for disposition of habeas corpus proceedings in federal courts the District Court substituted the contrary standards for state court determination of *coram nobis* applications. The factual basis of the *coram nobis* proceedings was determined by the decision.

The decision in this case now affirmed by an equally divided court cannot be rationalized with the former opinion of this Court in the *coram nobis* proceeding. There are several clear principles of law involved in this decision which cannot be rationalized with existing decisions.[1] The equally

[1] In a note concerning reversals by memorandum opinions it has been stated that "An opinion is a check on 'administrative justice' and doubtful reasoning. It makes possible the thoughtful extension, limitation or correction of doctrine in subsequent cases. It is a guide, in the present instance much needed, to counsel and inferior courts. It is a mark of respect in case of reversal, for the court reversed. It is submitted that in cases like the present, there are grave objections to the Court's departure from its practice of delivering opinions." *A Memorandum Decision*, 40 Harv. L. Rev. 485, January, 1927.

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divided court and the lack of opinion thereby casts doubt upon these principles of law. The present decision in this case and the resultant confusion will increase rather than decrease the applications to this Court for certiorari from decisions of district courts.

The effect of the Court's order is to completely bar petitioner's right to a hearing with compulsory process and right of cross examination in any judicial forum. Such a consequence, it is submitted, is in and of itself a denial of due process.

It cannot be said that petitioner's claims are without merit. There was a vigorous dissenting opinion in the Alabama Supreme Court and in this Court on the *coram nobis* proceeding. If petitioner is now electrocuted there will always be grave doubt as to whether or not his life was taken without due process of law. Our Constitution requires that due process of law be afforded at every step of our judicial proceedings. Is it not more in keeping with our principles to grant a full and complete hearing of this petitioner's claim of denial of rights guaranteed by our Constitution?

Conclusion

Petitioner has been seeking a hearing of his claim that his conviction is in violation of the United States Constitution—a hearing within the accepted meaning of the word. If he had been granted such a hearing the entire matter would have been disposed of. If his claims were so unbelievable the State of Alabama would not have opposed such a hearing at every stage of both proceedings.

We are not unaware of the large number of petitions for writs of habeas corpus in federal courts. On the other

hand, we are certain that the present decision by an equally divided court will increase rather than decrease applications to this Court for review of such cases.

Where a man's life is at stake and constitutional rights are involved his life should not be taken as the result of a decision by an equally divided court based upon a half hour argument.

WHEREFORE, petitioner prays that this Court grant to petitioner a re-hearing by having the case placed on the regular docket for a full hearing. Petitioner further prays that Mr. Justice BLACK reconsider his reasons for not participating in this case and in the light of the equally divided court that he participate in the hearing of argument and if necessary the final decision of the case.

Counsel represents to the Court that this petition for re-hearing and other relief is not filed for the purpose of delay.

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FEBRUARY 7, 1949.

Per Curiam Decision.

No. 121, Misc. TAYLOR *v.* DENNIS, WARDEN. Certiorari, 335 U. S. 890. Argued January 31–February 1, 1949. Decided February 7, 1949. *Per Curiam:* The judgment and order of the United States District Court for the Middle District of Alabama and the order of the United States Court of Appeals for the Fifth Circuit are affirmed by an equally divided Court. MR. JUSTICE BLACK took no part in the consideration or decision of this case. *Nesbitt Elmore* argued the cause for petitioner. With

him on the brief were *Thurgood Marshall, Frank D. Reeves* and *Franklin H. Williams. A. A. Carmichael,* Attorney General of Alabama, and *Bernard F. Sykes,* Assistant Attorney General, submitted on brief for respondent. [See 335 U. S. 252.]

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